

The CORPORATION JOURNAL

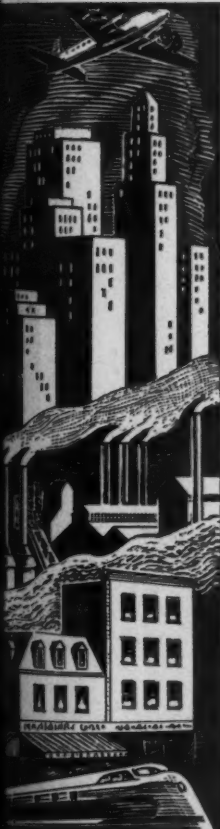
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Vol. 19, No. 6

MARCH 1950

Complete No. 361



Collection of Mississippi use tax held not required as to sales consummated outside state, solicited by non-resident salesmen where goods were shipped into state . . . Page 113

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When Tax-Hungry States Spot Taxable Corporations . . .

Then

the corporation's lawyer has his work cut out for him. Which of the multiplicity of different taxes in different states are for his client to pay—and when? . . . which of the multiplicity of different reports (designed by different states to bring taxables clearly to light) are to be filed by his client, and where? . . . occupation license tax in one state, income tax in another, use tax here, corporate excess there . . . sales taxes, intangible property taxes and "business" taxes . . . annual capital stock return . . . annual "foreign bonus report" . . . Report of Change in Stated Capital and Surplus . . . annual report of dividends paid to residents . . . registry statement . . . Annual Certificate of Condition.

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MARCH 1950

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property taxes

Exemption of Shares of Stock

FREQUENTLY, it is found of interest to know the extent to which certain intangibles, such as, for instance, shares of stock in domestic and foreign business corporations, held by residents, are taxed in the various states for property tax purposes. Generally, it may be said that such shares are not subject to ad valorem property taxes in twenty-one states and the District of Columbia, and that they may also be exempt in the hands of residents in fifteen additional states, if the corporation whose stock is owned is present there and makes payment of certain taxes by reason of its local activities.

There are twelve states in which all, or practically all, types of intangibles are found to be exempt from ad valorem taxation and where shares of stock of domestic and foreign business corporations owned by residents are not taxed for ad valorem tax purposes. These states are Arizona, Colorado, Delaware, Massachusetts, New Hampshire, New Jersey, New York, Oregon, Utah, Vermont, Washington and Wisconsin. The District of Columbia may be added to this group.

There are nine additional states where various types of intangibles are not taxed and where such non-taxed types include shares of stock in both domestic and foreign business corporations. These nine states are California, Connecticut, Louisiana, Maryland, Minnesota, Missouri, Nevada, Virginia and Wyoming.

While the states of Connecticut, Nevada, New Jersey, Washington and

Wyoming do not impose personal income taxes, it may perhaps be said that in the other states previously mentioned the exemptions stem, in large part, from the fact that personal income taxes are imposed which reach the dividends, interest and other increment of intangibles.

In fifteen states, the taxation, or exemption from taxation, of shares of stock in domestic and foreign business corporations in the hands of residents is dependent upon whether certain types of state or local taxes are paid by the particular corporation or not. These are Idaho, Illinois, Kansas, Kentucky, Mississippi, Montana, New Mexico, North Carolina, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas and West Virginia. There, if the taxes referred to are paid by the corporation whose stock is held, the shares are regarded as exempt in the hands of resident holders.

In the remaining twelve states, shares of stock in both domestic and foreign business corporations are regarded as subject to ad valorem property taxes, regardless of whether the corporation whose stock is held may pay substantial state or local taxes or not. These are Alabama, Arkansas, Florida, Georgia, Indiana, Iowa, Maine, Michigan, Nebraska, North Dakota, Ohio and Rhode Island. It is to be noted that in Florida, Georgia, Indiana, Iowa, Michigan, Nebraska, Ohio and Rhode Island, shares of stock are specially classified and subject to taxation at comparatively low rates.



domestic corporations

DELAWARE

Chancery Court rules it has jurisdiction, in stockholder's derivative action, over contingent, unmatured debt of Delaware company to non-resident, so as to subject debt to sequestration order.

The issue for determination was the validity of an order of sequestration which the plaintiff, in a stockholder's derivative action had secured under Paragraph 4374 of the Revised Code, 1935, seeking a money judgment in excess of \$500,000 against the individual defendants for alleged acts of malfeasance. The defendant Delaware corporation, on whose behalf suit was brought had given the moving individual defendant, a non-resident of Delaware, a non-negotiable promissory note dated January 31, 1949, executed and delivered by the corporation to the moving defendant in New York State, where it was payable both as to principal and interest. As security for the note, the corporation delivered to the moving defendant in New York certain collateral consisting of 1,000 shares of stock of another Delaware company. The payee, under the terms of the note, was to look only to the collateral for the payment of the note and the interest thereon, and was not to look to the general assets of defendant company for payment.

The Court of Chancery, New Castle County, denied a motion to quash the order of sequestration. It concluded that a "mere indebtedness" may be sequestered under the statute mentioned; that the court had ample jurisdiction over the sequestered corporation, in that it could effectively direct payment; that, for the purpose of the

application of the statute, a debt owed by a debtor domiciled in Delaware has a situs in Delaware; that the statute authorized the seizure of the obligation which had been seized, even though it was considered unmatured and contingent in some respects.

The court also considered, in the light of decisions of the Supreme Court of the United States, whether its order for the disposition of the sequestered property should be entitled to full faith and credit status in determining in some other state the rights of the non-resident creditor in the collateral held by him to secure a debt such as that before it. It construed the statute as authorizing the seizure of the debt and as empowering the court to transfer to the purchaser at the sequestrator's sale the principal debt with the ancillary right to require the delivery of the collateral by the non-resident creditor, and concluded that such an order would be entitled to full faith and credit in an action in another state by the purchaser at the sequestrator's sale seeking to procure possession of the collateral, noting, however, that his rights would be subject to the rights of *bona fide* purchasers without knowledge. Referring to the nature of the suit as a stockholder's derivative action, in which the defendant corporation was the real plaintiff, sequestering a debt due from itself, the court found that "there is no merit to the contention

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that self-sequestration is not permissible under the Delaware statute."

Weinress v. Bland et al., Court of Chancery, New Castle County, January 12, 1950. Hugh M. Morris and Edwin D. Steel, Jr., of Morris, Steel, Nichols & Arsh, for plaintiff John Van Brunt

of Killoran & Van Brunt, for defendant Morris H. Gotthilf, appearing specially. Clair J. Killoran of Killoran & Van Brunt, for defendant Universal Laboratories, Inc. Commerce Clearing House Court Decisions Requisition No. 425023.

ILLINOIS

Section 45 of Business Corporation Act relating to stockholder inspection of corporate records, ruled constitutional.

Petitioner, a stockholder in defendant corporation, had been successful in the court below in obtaining a writ of mandamus to enable him to copy a list of the shareholders of the company and in assessing a statutory penalty against its president and secretary because of their refusal to permit him to copy the list. The defendants took their appeal directly to the Supreme Court of Illinois on the question of the constitutionality of Section 45 of the Business Corporation Act, which permits a stockholder of record for at least six months immediately preceding his demand, as petitioner was, to examine the corporate records and to make extracts therefrom and penalizes corporate officers and agents denying such action.

The court, after an examination of the statute and its development, ruled it was not unconstitutional. It reversed the lower court, finding that

petitioner admitted the company had opened the books, records and stock list to his inspection but had refused to let him copy the list of stockholders; that he had indicated he did not intend to communicate with the stockholders; that the reasons he gave in order to copy the list were nebulous and that it was evident that he was unfamiliar with the company's affairs. The court, therefore, concluded that his actions were not "indicative of sufficient interest to satisfy the meaning of proper purpose."

Sawyers v. American Phenolic Corporation et al., 89 N. E. 2d 374. Winston, Strawn, Shaw & Black (Walter A. Wade, George B. Christensen and John L. Behr, of counsel), of Chicago, for appellants. Carney, Crowell & Leibman (G. Kenneth Crowell, Morris I. Leibman and Kendall M. Cole, of counsel), of Chicago, for appellee.

MARYLAND

Stockholders' approval ruled not required to give effect to plan submitted by defendant company's directors to its preferred stockholders, offering exchange of preferred shares for shares in another company held by defendant and for cash, in addition.

Plaintiff, a citizen of New York, brought suit against defendant Maryland investment company and its

officers and directors in proceedings which were removed to the United States District Court, District of Mary-

land, in an endeavor to enjoin all of the defendants from putting into effect a plan, prepared by the directors, without stockholder approval, under which defendant's preferred stockholders were offered common stock of another company, of which defendant owned 1,000,000 shares, and cash, in exchange for outstanding shares of defendant's preferred stock.

The court gave consideration to allegations of the plaintiff of fraud on the part of defendants in presenting the plan and to his contention that it was ultra vires and in violation of the laws of Maryland. After reviewing the plan and its presentation to the preferred

shareholders without first obtaining approval of the stockholders generally, as related to the company's charter and the corporation laws of Maryland, the court concluded that the complaint was lacking in merit and directed that an injunction issued early in the proceedings was to be dissolved.

Brown v. Eastern States Corporation et al., 86 F. Supp. 887. Simon E. Sobeloff and Eugene Feinblatt of Baltimore and David I. Shivitz of New York City for plaintiff. George Cochran Doub (Marshall, Carey & Doub) of Baltimore, and Horace R. Lamb (LeBouef & Lamb) of New York City, for defendants.

NEW YORK

Where stockholder sought appraisal of shares between time of adoption and subsequent rescission of stockholders' resolution abolishing preferential rights, court rules, in denying relief, that foundation of right to relief was lacking.

Appellant owned 30 of the 120 issued shares of the capital stock of respondent company. At a stockholders' meeting of respondent, a resolution was adopted which was designed to increase its capital stock and to arrange for the classification of its shares, and it was provided therein that the preferential stockholder rights to purchase or subscribe to the new issues should be abolished. Petitioner-appellant voted against the resolution but made no specific objection. Shortly afterward, however, she made written objection to the action taken at the stockholders' meeting in adopting the resolution, and particularly as to its denial of her preferential rights as an owner of outstanding stock and demanded payment therefor. Thereafter, and within the time limited by statute, she noticed her motion for appraisal of the value of her shares, pursuant to Section 21 of

the Stock Corporation Law. Two days before the motion was made returnable, the stockholders' action in adopting the resolution mentioned was rescinded at a meeting, duly called, before the purposes which it designed had become effective by the filing of a certificate pertaining thereto as required by statute.

The New York Supreme Court, Appellate Division, Third Department, affirmed an order made at Special Term which denied appellant's application for the appointment of appraisers pursuant to Sections 21 and 38 of the Stock Corporation Law. It pointed out that the right to appraisal arises when the action in altering the preferential rights has become effective, that is, when, as stated in subdivision 9 of Section 38, the certificate alters them. "Thus," concluded the court, "when appellant's application for the appraisal

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was presented, none of her preferential rights had ever been altered, and so the very foundation of her right to the relief was lacking."

Application of Eaton, 92 N. Y. S. 2d 867. William D. Kiley of Oneida

(MacKenzie, Smith H. Mitchell of Syracuse, William L. Broad, of counsel) for appellant. Hancock, Dorr, Ryan & Shove of Syracuse, for respondent.

When plaintiff preferred stockholder, entitled to cumulative unpaid dividends, dissented to reclassification of stock and defendant corporation then called plaintiff's stock only for redemption, plaintiff held to have good cause of action for a declaratory judgment.

Plaintiff was the owner of 40 shares of defendant corporation's \$100 par preferred stock which was subject to 7% cumulative unpaid dividends amounting to \$77 per share at a time when he was notified of a reorganization plan which was to be considered at a special meeting of the stockholders on June 25, 1946. Under the plan, plaintiff and other stockholders similarly situated would have received 5 shares of new preferred stock at a par value of \$25 per share with annual cumulative dividends of \$1.50 per share for each share of the old preferred stock. Four days before the meeting, plaintiff sent a letter to defendant notifying it that he objected to the proposed reclassification and that he demanded an appraisal and payment for his stock pursuant to the statute. The day before the meeting, the defendant notified the plaintiff that it had elected to redeem the 40 shares of preferred stock held by him at \$110 per share, in accordance with a redemption provision in the stock certificate held by plaintiff. This was the only stock so called for redemption. On the date scheduled, the reclassification plan was approved and accepted by the stockholders. Without taking any steps seeking an appraisal, plaintiff instituted suit seeking a declaration of his rights.

The New York Supreme Court, Appellate Division, Fourth Department, observed that the action was clearly one for a declaratory judgment. The court remarked: "The plaintiff had a choice to accept the new stock or to proceed with an appraisal. He had no other remedy. The defendant's present insistence that he has no right to the new stock and that his only recourse is to receive the redemption of his stock at \$110 per share might well be determined upon a trial to be a coercive act on the part of the directors which is forbidden in view of the fiduciary duty which they owed to the plaintiff as a stockholder. The corporation, acting through its board of directors, is required to act in the common interest of all its stockholders. Upon reclassification, all holders of the same class of stock should receive equal treatment. It cannot single one stockholder out and punish him for voicing disapproval of the reorganization scheme. It is not permitted to surprise, catch off guard, over-reach or oppress the minority stockholders and if that occurs equity may take steps to right the wrong." The court felt that the facts as developed and clarified at the trial "should disclose the true motive and intent of defendant's officers in calling plaintiff's stock for redemption and their refusal

thereafter to let him have the new stock." An order denying motions by defendant for summary judgment was affirmed.

Liebschutz v. Schaffer Stores Co., Inc.,* 93 N. Y. S. 2d 125. Samuel Levy

of Rochester, for plaintiff-respondent. Poskanzer & Muffson of Albany, for defendant-Appellant.

* The full text of this opinion is printed in the **CCH New York Corporation Law Reporter**, page 9411.



foreign corporations

COLORADO

Unlicensed corporation making sales to Colorado distributor of goods shipped f.o.b. and later sold by distributor to its Colorado customers, ruled not "doing business" so as to be subject to service of process in Colorado.

Service of process upon defendant California corporation, not licensed in Colorado, was made by serving a dealer-sales manager while he was in Colorado for the purpose either of collecting delinquent money owed his company by the plaintiff or obtaining an assignment of a sufficient amount of plaintiff's stock of merchandise to secure payment of the account.

Plaintiff acted as distributor in Colorado of airmotive parts manufactured and sold by defendant under a contract, for alleged breach of which this suit was brought in the District Court for the City and County of Denver. All orders of plaintiff were to be subject to acceptance by defendant; deliveries of goods were to be made f.o.b. by plaintiff at the point of shipment outside Colorado. Plaintiff was given its territory as exclusive distributor of defendant's products, and plaintiff was given no powers to act for or bind

defendant in any respect. Plaintiff disposed of the goods purchased by conducting sales to its own dealer customers in Colorado.

The Supreme Court of Colorado affirmed a judgment of the District Court which sustained defendant's motion to quash the service of summons on the ground that defendant was not "doing business" in Colorado.

Begole Aircraft Supplies, Inc. v. Pacific Airmotive Corporation,* 212 P. 2d 860. L. Bernard Davis and Roepnack & Pine of Denver, for plaintiff in error. Walter E. Schwed and Herbert J. Newcomb of Denver, for defendant in error. Commerce Clearing House Court Decisions Requisition No. 421022.

* The full text of this opinion is printed in the **State Tax Reporter**, Colorado, page 511.

MASSACHUSETTS

Service of process upheld by Federal Court of Appeals, where made upon corporation's agent soliciting orders, who aided in installation, effected conditional sales, maintained stock of repair parts and serviced incubators sold in interstate commerce.

In *Schmikler v. Petersime Incubator Company*, 77 F. Supp. 11, (The Corporation Journal, January, 1949, page 249), the United States District Court, District of Massachusetts, upheld service of process upon an unlicensed corporation in Massachusetts which had been made upon its agent, soliciting orders, who aided in installation, effected conditional sales, maintained a stock of repair parts and serviced incubators sold, which were shipped across state lines to purchasers in New England.

Upon a rehearing, the District Court dismissed the action, ruling that the corporation was not, under the circumstances, present and doing business in Massachusetts so as to render it subject to the jurisdiction of the court. (83 F. Supp. 869.)

Upon appeal, the United States Court of Appeals, First Circuit, has vacated the order of the District Court

dismissing the complaint for lack of jurisdiction. The higher court, in upholding the service of process, stressed that, in addition to solicitation of interstate business, defendant conducted in Massachusetts "a well-settled and continuous course of business over a protracted period." It cited the case of *International Shoe Company v. State of Washington*, 326 U. S. 310, as demonstrating "that the constitutional requirements of jurisdiction have been liberalized and are not as strict as they were formerly presumed to be."

Schmikler v. Petersime Incubator Company, United States Court of Appeals, First Circuit, November 15, 1949. Morris Michelson (Maurice D. Slovin, on the brief), of Boston, for appellant. James D. St. Clair (Joseph N. Welch and Halet Dorr, on the brief), of Boston, for appellee. Commerce Clearing House Court Decisions Requisition No. 419873.



taxation

GEORGIA

Accounts receivable, due foreign company from local brokers, to whom company's salesmen gave orders secured for company's products, when operating out of local office, held subject to intangibles tax.

Plaintiff foreign corporation sought to enjoin collection of intangible taxes

upon accounts receivable due it by brokers in Georgia, on the ground that

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easy—it's right to do business as a
corporation. Why is the CT SYSTEM
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so many attorneys? That's easy too—
because it's the one-source system which
provides all the information the at-
torney needs to protect the cor-
poration's most impor-
tant possession.

it was not doing an intrastate business in Georgia and that the situs of the accounts receivable was not in Georgia. Plaintiff had an office in Fulton County, in charge of a district supervisor who directed the work of one salesman in Fulton County and thirteen other salesmen throughout the state. These salesmen solicited orders from retailers, giving the retailers the option of selecting the broker in Georgia through whom the order was to be placed. A copy of each order was sent to the plaintiff company in Memphis and also to the broker. Upon approval by the company and the broker, the goods were shipped direct to the purchaser, the bill of lading was sent to the broker and the account charged to the broker who was indirectly liable for payment to the plaintiff company, the retailer in turn being liable to the broker. The salesmen also carried a stock of goods with them

which were replenished from stocks of the brokers as sales were made.

The Superior Court, Fulton County, ruled that the company was doing business in Georgia, since the overall effect was that plaintiff sold its products at retail in Georgia. The court concluded that the accounts receivable due and owing by the brokers to the home office constituted a proper basis for decision by the Fulton Court.

American Snuff Company v. Suttles,* Superior Court, Fulton County, October 14, 1949. Sutherland, Tuttle & Brennan of Atlanta, for plaintiff. Ralph H. Pharr, Deerwood T. Pyle and W. S. Northcutt of Atlanta, for defendant. Commerce Clearing House Court Decisions Requisition No. 419541.

* The full text of this opinion is printed in the *State Tax Reporter*, Georgia, page 2753.

MINNESOTA

Interest of mortgagor in property on which federal government holds the mortgage, ruled not immune from state property taxation.

This was an action by the State of Minnesota for a money judgment for a personal property tax from a dairy company, and a cross-action by the company to set aside a real estate tax judgement and sale, under circumstances where the company entered into a contract with the United States in connection with the Lend-lease program, under which it acquired a site, built a milk dehydration plant, sold the plant to the United States, with an option to repurchase, and simultaneously leased the plant and equipment from the Government. The dairy company contended that the transaction constituted a sale and a lease

back, while the state contended that the transaction was a mortgage.

The Minnesota Supreme Court discussed the transaction in detail and concluded that "the combined warranty deed and bill of sale here is in form and substance a mortgage of both realty and of personality." The court also ruled that the dairy company's interest in the real property taxed was not immune from state taxation upon grounds of federal immunity. "The tax in question," said the court, "is non-discriminatory. Being subordinate to the rights of the federal government, it neither affects nor infringes upon them." As to the ques-

tion whether "one using property, upon which the government holds a mortgage, to serve the government is immune upon federal grounds from a personal property tax imposed upon him in personam," the court regarded this question as having been answered emphatically in the negative in numerous decisions of the Supreme Court of the United States.

Land O' Lakes Dairy Company v. County of Wadena and State of Minnesota,* 39 N. W. 2d 164. Doherty, Rumble, Butler & Mitchell, Harold Jordan, of St. Paul, for appellant. J.

A. A. Burnquist, Attorney General, B. Sjoselius, Deputy Atty. General, Charles P. Stone, Asst. Atty. General, Charles W. Kennedy, County Attorney, Wadena, for respondents. Commerce Clearing House Court Decisions Requisition No. 415990. (*Appeal filed in the Supreme Court of the United States, November 7, 1949; Docket No. 447.*) Judgment affirmed, *per curiam*, December 12, 1949, (70 S. Ct. 251. *Rehearing denied, January 16, 1950.*) (See page 115.)

* The full text of this opinion is printed in the **State Tax Reporter**, Minnesota, page 2716.

MISSISSIPPI

Collection of use tax ruled not required of unlicensed foreign corporation as to sales consummated outside state, solicited by nonresident salesmen, where goods sold were shipped into state.

In *Reichman-Crosby Company v. Stone*, 37 So. 2d 22, (The Corporation Journal, February, 1949, page 272), the Mississippi Supreme Court held that the collection of the state use tax could not be required of an unlicensed foreign corporation which had no office, place of business or resident agent in the state. The property, for the use of which the use tax had been demanded, and for which recovery was sought, was alleged to have been sold on orders taken by the appellant company's nonresident salesmen and the property had been delivered to a common carrier at Memphis, Tennessee for transportation to purchasers residing in Mississippi. In that case, a judgment for the defendant tax commission chairman below had been reversed, upon the appeal, by the Mississippi Supreme Court and the case remanded for a trial on the merits. When the case

was tried anew, this resulted in a judgment granting the corporation the recovery sought.

Upon the second appeal, this judgment was affirmed by the Mississippi Supreme Court, which found no reason to reach a conclusion different from that outlined in its earlier opinion. The court regarded the statute imposing the use tax, as applied to the situation of the corporation, as violating the due process clauses of both the State and Federal Constitutions.

Stone v. Reichman-Crosby Company,* 43 So. 2d 184. J. H. Sumrall of Jackson, for appellant. Creekmore & Creekmore of Jackson, for appellee. Commerce Clearing House Court Decisions Requisition No. 420718.

* The full text of this opinion is printed in the **State Tax Reporter**, Mississippi, page 7614.

PENNSYLVANIA

State Supreme Court affirms Dauphin County Court holding requiring interest on United States securities issued after March 1, 1941 to be excluded in computing corporate net income tax for 1942.

In *Commonwealth of Pennsylvania v. Curtis Publishing Company*, decided by the Court of Common Pleas of Dauphin County, (The Corporation Journal, February, 1948, page 92), it was held that interest on United States securities which were issued after March 1, 1941, and included in the "net income" figure adopted from the Federal return by Pennsylvania as its corporate net income tax base, was required to be excluded when computing a corporation's state income tax for 1942.

Upon appeal, the Supreme Court of Pennsylvania has affirmed this judgment. The court referred to Pennsylvania's exemption of corporations from taxation of interest on state and municipal securities under the state's corporate net income tax, and concluded that all interest on United States se-

curities must be deducted or those securities "are not accorded by Pennsylvania the equality of treatment constitutionally required as between them and the securities of this Commonwealth."

Commonwealth of Pennsylvania v. Curtis Publishing Company,* 69 A. 2d 410. David E. Fuss, Deputy Attorney General and T. McKeen Chidsey, Attorney General, attorneys for appellant. Hull, Leiby & Metzger and Wm. H. Wood, Charles W. Hull, Leon Metzger and Geo. Ross Hull of Harrisburg, attorneys for appellee. Commerce Clearing House Court Decisions Requisition No. 420151.

*The full text of this opinion is printed in the **State Tax Reporter**, Pennsylvania, page 10,585.



state legislation

Measures introduced in the State Legislatures presently in session include the following:

Georgia—A proposed 3% sales tax. (H. B. 788.) Also, a proposed tax of one-fifteenth of one per cent of all gross receipts over \$50,000, to be levied on all individuals, partnerships, corporations and associations. (H. B. 1021.)

Massachusetts—A constitutional amendment is proposed to permit the levying of a graduated income tax. (H. B. 162, H. B. 319, H. B. 1594.) H. B. 443 contemplates that property stored in licensed public storage warehouse for hire for less than six months would be excluded from tangible personal property to be taxed to the owner in the town where it is situated on January 1.

Mississippi—An increase in the sales tax of 1% is proposed by S. B. 184.



appealed to the supreme court

*The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.**

OCTOBER 1949 TERM

GEORGIA. Docket No. 454. *Georgia Railroad & Banking Company v. Redwine*, United States District Court, Northern District of Georgia, July 29, 1949. (The Corporation Journal, February, 1950, page 92.) Property tax exemption—suit against state in Federal Court. **Appeal filed, November 12, 1949, Jurisdiction noted, December 5, 1949.**

MINNESOTA. Docket No. 447. *Land O'Lakes Dairy Company v. County of Wadena and State of Minnesota*, 39 N. W. 2d 164. (The Corporation Journal, March, 1950, page 112.) Property taxes—tax upon interest of mortgagor in land, where legal title is held by the United States. **Appeal filed, November 7, 1949. December 12, 1949:** "Per curiam: The motion to affirm is granted and the judgment is affirmed. *S.R.A., Inc. v. Minnesota*, 327 U. S. 558; *Oklahoma Tax Commission v. Texas Co.*, 336 U. S. 342." (70 S. Ct. 251.) **Rehearing denied, January 16, 1950.**

WASHINGTON. Docket No. 500. *Columbia Steel Company v. State of Washington*, 192 P. 2d 976. (The Corporation Journal, October, 1948, page 195.) Business and occupation tax—wholesale sales—shipments in interstate commerce. **Petition for writ of certiorari filed, December 27, 1949.**

* Data compiled from CCH U. S. Supreme Court Bulletin, 1949-1950.

Intangibles Ruled Not Taxable According to Statutory Allocation Formula

The Circuit Court of Marquette County, Michigan, has held that the intangibles of a foreign corporation, used in connection with or acquired from the conduct of business both within and outside that state, cannot be subject to the Michigan intangibles property tax upon a fractional basis computed by means of a statutory allocation formula consisting of sales, property and payroll ratios. (*Cleveland-Cliffs Iron Co. v. State of Michigan*.)



regulations and rulings

Florida—An out-of-state seller whose only activity in Florida is the mere solicitation of orders by salesmen operating from and reporting to offices located outside the state is required, under Section 6, Chapter 26319, Laws of 1949, to obtain a dealer's certificate to collect the use tax from those to whom he ships tangible personal property for use in Florida and to remit the same monthly, using forms furnished by the Comptroller. (Ruling of State Comptroller, State Tax Reporter, Florida, ¶ 65-167.25.)

Idaho—Livestock taxed in one county and then sold, transported to another county and confined to a feed lot for the purpose of preparing the same for market, will not be subject to taxation in the second county unless remaining there on and after the second Monday of January, whereupon it will then be taxed to the new owner for that portion of the year it was kept in the feed lot. However, if such livestock has not been sold, it will not be considered as migratory and could only be assessed in the home county. (Opinion of the Attorney General, State Tax Reporter, Idaho, ¶ 2021.)

Iowa—If an item is normally stocked in Iowa by an Iowa dealer, but in quantities less than required by the purchaser in economical operation of his business, it is not subject to the use tax; furthermore, if an item is regularly sold at retail in Iowa by an Iowa dealer, but is never carried in stock by Iowa dealers and is not manufactured in Iowa for sale, it is not subject to the use tax. (Opinion of the Attorney General, State Tax Reporter, Iowa, ¶ 64-511.)

North Carolina—The cost of a tire to a retailer who sells to a consumer includes the amount which the retailer has paid to the manufacturer. In this case, the 3% sales tax is computed on the entire cost to the consumer including the amount representing the federal tax paid by the manufacturer which the retailer was required to pay to the manufacturer. (Opinion of the Attorney General, State Tax Reporter, ¶ 60-302.)

A foreign corporation is liable for the 3% use tax on all merchandise shipped into North Carolina if the corporation employs salesmen who contact customers there for the express purpose of soliciting orders. However, no tax is due by a foreign corporation on merchandise shipped into North Carolina if the corporation does not employ salesmen for the purpose of customer solicitation within the state. (Letter, Commissioner of Revenue, State Tax Reporter, North Carolina, ¶ 63-025.)

Oklahoma—Firms engaged in the real estate business must obtain a real estate broker's license for each such business, but not for each member thereof. Every active member of such firm should secure a salesman's license. An individual licensed as a broker is not required to obtain a salesman's license. (Opinion of the Attorney General to the Oklahoma Real Estate Commission, State Tax Reporter, Oklahoma, ¶ 31-231.)



some important matters

for March and April

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

Alabama—Annual Franchise Tax Return due between January 1 and March 15.—Domestic and Foreign Corporations.

Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

Annual Franchise Tax due April 1, but may be paid without penalty until April 30.—Domestic and Foreign Corporations.

Alaska—Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

Arizona—Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

Annual Statement of Mining Companies due between January 1 and April 1.—Domestic and Foreign Corporations engaged in mining of any kind.

California—Franchise (Income) Tax Return and Payment of one-half of tax due on or before March 15.—Domestic and Foreign Corporations.

Quarterly Retail Sales Tax Return and Payment due on or before April 30.—Domestic and Foreign Corporations.

Colorado—Annual Report due on or before March 15.—Domestic and Foreign Corporations.

Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

Annual License Tax due on or before May 1.—Domestic and Foreign Corporations.

Connecticut—Income Tax Return due on or before April 1.—Domestic and Foreign Corporations.

Quarterly Retail Sales Tax Return and Payment due on or before April 30.—Domestic and Foreign Corporations.

Delaware—Returns of Information at the source due on or before April 30.—Domestic and Foreign Corporations making certain payments of salaries, dividends, interest or other income to citizens or residents of Delaware during 1949.

Annual Franchise Tax due after April 1 and before July 1.—Domestic Corporations.

District of Columbia—Franchise (Income) Tax Return due on or before April 15.—Domestic and Foreign Corporations.

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Georgia—Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

Intangible Property Tax Return due on or before March 15.—Domestic and Foreign Corporations.

Idaho—Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

Indiana—Quarterly Gross Income Tax Return and Payment due on or before April 30.—Domestic and Foreign Corporations.

Iowa—Income Tax Return and Returns of Information at the source due on or before March 31.—Domestic and Foreign Corporations.

Return of Taxes withheld at the source due on or before March 31.—Domestic and Foreign Corporations.

Quarterly Retail Sales Tax Return and Payment due on or before April 20.—Domestic and Foreign Corporations.

Kansas—Annual Report and Franchise Tax due on or before March 31.—Domestic and Foreign Corporations.

Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

Kentucky—Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

Income Tax and Corporation License Tax Return due on or before April 15.—Domestic and Foreign Corporations.

Maryland—Annual Report (Personal Property Return) due on or before April 15.—Domestic Corporations.

Franchise Tax Report and Franchise Tax due on or before April 15.—Domestic Corporations.

Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

Annual Report (Personal Property Return) and Filing Fee due on or before April 15.—Foreign Corporations.

Massachusetts—Excise Tax Return due on or before April 10.—Domestic and Foreign Corporations.

Michigan—Intangible Personal Property Tax Return due on or before March 31.—Domestic and Foreign Corporations.

Minnesota—Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

Annual Report due between January 1 and April 1.—Foreign Corporations.

Mississippi—Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

Missouri—Income Tax Return due on or before March 31.—Domestic and Foreign Corporations.

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Missouri—Continued

Quarterly Retail Sales Tax Return and Payment due on or before April 15.—Domestic and Foreign Corporations.

Montana—Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

Annual Return of Net Income due on or before March 31.—Domestic and Foreign Corporations.

Annual Statement due within two months from April 1.—Foreign Corporations.

Nebraska—Statement to Tax Commissioner due on or before March 10.—Foreign Corporations.

Nevada—Annual Statement of Business due not later than month of March.—Foreign Corporations.

New Hampshire—Annual Return due on or before April 1.—Domestic and Foreign Corporations.

Franchise Tax due on or before April 1.—Domestic Corporations.

New Jersey—Annual Franchise Tax Return and Tax due on or before April 15.—Domestic and Foreign Corporations.

New Mexico—Franchise Tax Return due on or before March 15.—Domestic and Foreign Corporations.

Returns of Information at the source due on or before April 1.—Domestic and Foreign Corporations.

Income Tax Returns due on or before April 15.—Domestic and Foreign Corporations.

Franchise Tax due May 1.—Domestic and Foreign Corporations.

New York—Annual Franchise (Income) Tax Return (Form 3 CT, Article 9A, Tax Law), due on or before May 15, together with one-half of tax.—Domestic and Foreign Business Corporations, Holding Companies and and Investment Trusts.

North Carolina—Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

Intangible Property Tax Return due on or before March 15.—Domestic and Foreign Corporations.

North Dakota—Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

Quarterly Retail Sales Tax Return and Payment due on or before April 20.—Domestic and Foreign Corporations.

Annual Report due between January 1 and April 1.—Foreign Corporations.

Ohio—Annual Franchise Tax Report due between January 1 and March 31.—Domestic and Foreign Corporations.

Annual Statement of Proportion of Capital Stock due between January 1 and March 31.—Foreign Corporations.

Oklahoma—Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

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Oregon—Excise (Income) Tax Return due on or before April 15.—Domestic and Foreign Corporations.

Pennsylvania—Capital Stock Tax Report and Tax and Corporate Loans Report and Tax due on or before March 15.—Domestic Corporations.

Franchise Tax Report and Tax and Corporate Loans Tax Report and Tax due on or before March 15.—Foreign Corporations.

Bonus Tax Report due on or before March 15.—Domestic Corporations.

Bonus Report due on or before March 15.—Foreign Corporations.

Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

Rhode Island—Business Corporation Tax Return and Tax due on or before May 1.—Domestic and Foreign Corporations.

Semi-Annual Report to Division of Industrial Inspection due in April and October.—Domestic and Foreign Corporations employing five or more persons in Rhode Island.

South Carolina—Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

South Dakota—Quarterly Retail Sales Tax Return and Payment due on or before April 15.—Domestic and Foreign Corporations.

Texas—Annual Franchise Tax Report due between January 1 and March 15.—Domestic and Foreign Corporations.

Annual Franchise Tax due on or before May 1.—Domestic and Foreign Corporations.

United States—Income Tax Return due on or before March 15.—Domestic Corporations and Foreign Corporations having an office or place of business in the United States.

Utah—Income (Franchise) Tax Return due on or before March 15.—Domestic and Foreign Corporations.

Vermont—Extension of Certificate of Authority due on or before April 1.—Foreign Corporations.

Virginia—Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

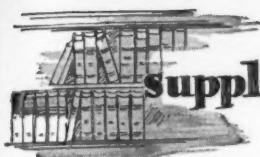
West Virginia—Annual License Tax Report due in April.—Foreign Corporations.

Quarterly Business and Occupation (Gross Sales) Tax Return and payment due on or before April 30.—Domestic and Foreign Corporations.

Wisconsin—Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

Privilege Dividend Return and Tax due on or before March 15.—Domestic and Foreign Corporations.

Annual Report due between January 1 and April 1.—Domestic and Foreign Corporations.



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- Judgment by Default.** Gives the gist of *Rarden v. Baker* and similar cases, showing how corporations qualified as foreign in any state and utilizing their business employees as statutory representatives are sometimes left defenseless in personal damage and other suits.

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